STATE OF MICHIGAN

COURT OF APPEALS

HERBERT E. RICE, JANET A. RICE, RICHARD C. SANDBROOK, and LOIS A. SANDBROOK, Plaintiffs/Counter-Defendants-Appellants,	UNPUBLISHED April 19, 2005
v	No. 250221 Clare Circuit Court
MARION J. WYSOCKI and CAMILLE G. WYSOCKI, Defendants/Counter-Plaintiffs-Appellees.	LC No. 02-900572-CH

Before: Cavanagh, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order quieting title. We affirm.

Plaintiffs first argue that the trial court erred in finding that defendants established that the parties acquiesced to the property line for the statutory fifteen-year period. We disagree.

Actions to quiet title are equitable and are, therefore, reviewed de novo. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). We review the findings of fact of a trial court sitting without a jury for clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). The trial court's legal conclusions are reviewed de novo. *Id.*

A claim of acquiescence based on the expiration of the statutory period of limitation, MCL 600.5801(4), does not require that the parties have a "bona fide controversy" regarding the boundary's location. *Sackett, supra* at 681. Instead, it requires only that the parties have acquiesced and treated the line as the boundary for the statutory period. *Id.*; *Walters, supra* at 224. The party claiming acquiescence must prove this by a preponderance of the evidence. *Walters, supra* at 224. Once the statutory period has run, "'the property owner of record would no longer be able to enforce his title, and the other property owner would have title by virtue of his possession of the land.'" *Sackett, supra* at 681, quoting *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993).

Here, the parties' testimony was largely in agreement. The parties agreed that before 1991 their seawalls met at the property line. Regarding the opposite end of the property line,

Herbert Rice testified that the boundary was marked by the common well. Defendants agreed with this, while Janet Rice testified that the common well was on plaintiffs' property. The parties also disputed whether defendants extended their seawall after plaintiffs allegedly left the steel seawall they had constructed incomplete. The trial court rejected plaintiffs' explanation that they allowed the contractor to leave six feet of the wall unfinished. The trial court asked Mrs. Rice,

> You understand how this doesn't make any sense to me? You engaged somebody to put up a seawall from point A to point B, and then he ends up being four feet or six feet short. Then he says, "I'm going to take my equipment out. If I have to come back, I'm going to charge you more money than I would have otherwise," when he had already agreed to do A to B. How does that make any sense?

Mrs. Rice responded, "I don't know."

The court also relied on the photographic evidence presented in making its finding on this point. It stated that plaintiffs' photographs showed their wall while it was still under construction, but that defendants' photographs, on the other hand, showed the wall *after* the contractor had finished his work. The trial court was able to make these determinations, it stated, based on how plaintiffs' seawall looked during the trial court's visit to the property. The trial court noted that plaintiffs' wall was "squared off" and reasoned, "[i]t [did]n't make any sense" for the contractor to square off the wall if it was, in fact, incomplete as plaintiffs contended.

The trial court did not clearly err in making its determinations. All of the witnesses acknowledged that the point where the seawalls met was the boundary between the parties' properties. The court reasonably found plaintiffs' testimony regarding their agreement with Mr. Heintz dubious, and it observed the condition of plaintiffs' seawall at the time of trial. The court therefore decided that the seawalls' locations had not changed following plaintiffs' construction of their steel seawall in 1991. Consequently, the court decided that the point that the parties and their predecessors agreed marked their boundary had not moved in the approximately thirty-two years defendants owned their property.

Moreover, there was no dispute that the point where the seawalls met served as the boundary, as far as the parties and their predecessors were concerned – at least until 2000, when plaintiffs had their property surveyed. By the time plaintiffs had their property surveyed, of course, the fifteen-year statute of limitation had already run. Regarding the boundary's location nearest the road, the trial court apparently accepted Marion Wysocki's and Mr. Rice's testimony that the cement block marked the property line. The court was free to believe these witnesses and reject Mrs. Rice's contradictory testimony, and the fact that the court did so does not evince that the court misunderstood the law of acquiescence. Therefore, we find no error in the court's decision.

Plaintiffs next argue that the trial court abused its discretion in admitting certain hearsay evidence. We disagree.

We review a trial court's decision to admit evidence for an abuse of discretion. *Sackett, supra* at 683. However, a judgment will be disturbed only where refusal to do so would be inconsistent with substantial justice. *Id*., citing MCR 2.613(A).

MRE 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay cannot be admitted as evidence unless it falls under an exception. MRE 802; *Merrow v Bofferding*, 458 Mich 617, 626; 581 NW2d 686 (1998) (citation omitted). MRE 804 enumerates hearsay exceptions that apply when the declarant is unavailable as a witness.

Mr. Wysocki testified that Russell Green, plaintiffs' predecessor in title who died in 1987, told him in 1976 that the tree between their properties marked the boundary. Mr. Wysocki further testified that he had this discussion with Mr. Green because Mr. Wysocki planned to build an addition to his house; he needed to know where the property line was so that he could abide by the county's eight-foot setback requirement.

Here, defendants argue that Mr. Green's statement was admissible under MRE 804(b)(3), which provides in relevant part:

> A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

We do not agree that the trial court abused its discretion in admitting the hearsay at issue. Mr. Green's statement regarding the property line was a statement against his proprietary interest because it disclaimed an interest in property past the tree. It further seems unlikely that Mr. Green would have told Mr. Wysocki that the tree marked the boundary unless it was true – especially in light of the conversation's context. MRE 804; *Sackett, supra* at 684. However, even if this testimony was improperly admitted, the error was harmless. See *Sackett, supra* at 683, citing MCR 2.613(A). Mr. Green's statement comported with Mr. Rice's and Mr. Wysocki's testimony that the tree marked the boundary.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Hilda R. Gage